IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.117 of 2003
AND
FAO (MVA) No.125 of 2003.

Judgment reserved on:27.04.2007.

Decided on: April 30, 2007

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1. *FAO (MVA) No.117 of 2003*:

Kamalesh Rani & Anr. vs. H.R.T.C. & Anr.

2. *FAO (MVA) No.125 of 2003*:

H.R.T.C. vs. Kamlesh Rani & Anr.

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The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

***FAO (MVA) No.117 of 2003*:**

For the Appellants: **Mr.Chirag Bhanu Singh, Advocate.**

For Respondent No.1: **Mr.Ashok Sharma, Advocate.**

FAO (MVA) No.125 of 2003

For the Appellant: **Mr.Ashok Sharma, Advocate.**

For Respondents No.1 & 2: **Mr.Chirag Bhanu Singh, Advocate.**

Kuldip Singh, Judge.

This judgment shall dispose of FAO No.117 of 2003 and FAO No.125 of 2003 both arising from award dated 3.10.2002 passed by learned Motor Accident Claims Tribunal-I, Solan, H.P. in M.A.C.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

Petition No.28-S/2 of 2001. The parties are referred in the same manner as in the impugned award.

2. The brief facts, as disclosed in the claim petition, are that respondent No.2 driver of bus No.HP-10-0397 owned by respondent No.1 was driving the said bus rashly and negligently on 9.6.2001 at about 2.15 P.M. on Kalka – Shimla National Highway and he crushed Devi Dayal pillion rider on scooter No.HR-49-2630 being driven by his uncle Khem Raj. It has been alleged that scooter was on its extreme left and when the scooter reached on a curve at Kalka Filling Station the bus came from behind at high speed and hit the scooter as a result of which Khem Raj driver of the scooter fell on the road towards left side and deceased fell on the road on the right side and Devi Dayal was crushed under the tyres of the bus and he died on the spot after receiving multiple injuries. The deceased was 10 years old at the time of accident and was a student of 4th Class. An F.I.R. No.79 of 2001 dated 9.6.2001 was registered against respondent No.2 at Police Station, Parwanoo under Sections 279, 337 and 304-A IPC. The petitioners are parents of the deceased and they have claimed Rs.5 lacs compensation.

3. The respondents filed separate replies. The respondent no.2 has taken the defence that accident has taken place due to rash and negligent driving of the scooter driver and not by him. The scooter driver was carrying some Jerricanes between his legs and pillion rider

was also carrying a tray and jerrycanes in both of his hands. The scooter driver could not control the scooter while overtaking the bus from wrong side on a curve and he struck against the hillock and deceased fell towards the roadside and died. The respondent no.1 has submitted that respondent No.2 was driving the bus carefully and cautiously. It has been submitted that the accident has taken place due to rash and negligent driving of the scooter driver.

4. The Tribunal held that respondent No.2 was responsible for the accident and has awarded Rs.1,01,000/- compensation out of which petitioner No.1 has been awarded Rs.61,000/- and petitioner No.2 Rs.50,000/-. The award has been passed jointly and severally against both respondents along with interest at the rate of 9% per annum from the date of petition till payment.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. In FAO No.117 of 2003, the learned counsel for the petitioners has submitted that the Tribunal has awarded less compensation. The petitioners are entitled to Rs.5 lacs compensation on account of death of Devi Dayal along with interest, as claimed in the petition. In FAO No.125 of 2003, the learned counsel for respondent no.1 has submitted that the accident has taken place due to rash and negligent driving of the scooter driver. The Tribunal has wrongly held that the accident has taken place due to rash and

negligent driving of bus driver. The award is excessive. The respondent No.2 driver has accepted the award by not filing any appeal even though the Tribunal has held him negligent in driving the vehicle.

7. The petitioners have examined PW-1 Dr.V.K.Kapil who has proved post mortem report Ext.PW-1/A of the deceased. PW-2 Kewal Singh has proved F.I.R. Ext.PW-2/A under Sections 279, 337 and 304-A I.P.C. PW-3 Smt. Kamlesh, mother of the deceased, has stated that she had only one son who died in the accident. She has two surviving daughters, her husband is disable. The deceased was 10 years old and Rs.10,000/- were spent on his last rites. PW-4 Khem Raj has stated that on 9.6.2001 he was driving scooter and his nephew Devi Dayal was pillion rider. When they reached near Petrol Pump, bus No.HP-10-0397 in high speed came from behind and while overtaking pushed the scooter towards hill side and he fell down and Devi Dayal was crushed under the bus which was being driven by respondent No.2. The accident has taken place due to rash and negligent driving of the bus driver. He lodged F.I.R. Ext.PW-2/A of the accident. He has denied in cross examination that he was holding jerrycanes between his legs and the pillion rider was also holding jerrycanes in his hands. He has also denied that he tried to overtake the bus from the wrong side and as a result of which scooter struck against the hill side and the boy fell on the road side.

8. RW-1 Pawan Kumar is the driver of the bus. He has stated that the driver of scooter tried to overtake the bus from the wrong side. The pillion rider on the scooter was having the trays and jerrycanes in his hands and the jerrycanes were tugged by scooterist in his legs. The scooterist lost his balance and the scooter struck against the hillock and fell down. The accident had taken place due to rash and negligent driving of the scooter driver.

9. The respondent No.1 in its reply has simply stated that the accident has taken place due to rash and negligent driving of the scooter driver. It is not the case of respondent No.1 that the accident has taken place while the scooter was overtaking the bus from the wrong side. The respondent No.2 on the contrary has taken the plea that the accident has taken place as the scooter driver was holding jerrycanes between his legs. The pillion rider was carrying trays and jerrycanes in his hands. The scooter driver while overtaking the bus from the wrong side could not control the scooter and struck against the hillock and for that reason accident had taken place. There is no unanimity in the defence of respondent No.1 and respondent No.2 how the accident has taken place. It is not believable that on a busy National Highway and on a curve the scooter driver will take a risk to overtake a bus from wrong side. It has not been explained by the respondents what was the necessity for the scooter driver to overtake the bus from the wrong side. The first version of the accident has

been given by the scooter driver in F.I.R. Ext.PW-2/A. The perusal of the F.I.R. makes it clear that bus driver was negligent at the time of accident. The criminal case was also registered against the bus driver. RW-1 Pawan Kumar driver has even denied that pillion rider was run over by the bus, whereas from the evidence on record it is clear that the deceased was run over by the bus. The post mortem report Ext.PW-1/A also proves that skull of the deceased was fully crushed as a result of which he died. The Tribunal has found respondent No.2 negligent for causing the accident. The respondent No.2 has accepted the impugned award and did not file any appeal or cross objection. The Tribunal has rightly returned the finding that accident has taken place due to rash and negligent driving of the bus driver. This requires no interference.

10. The deceased was 10 years old and was the only male child of the parents. The petitioner No.1 was 30 years old at the time of making statement. The petitioner No.2 is handicapped. The petitioners have placed nothing on record regarding the status of the family of the deceased and the future prospects of the deceased, had he not died in the accident. In the facts and circumstances of the case, the learned Tribunal has rightly assessed loss of income to the petitioners Rs.500/- per month on account of death of their son Devi Dayal. The Tribunal has rightly applied the multiplier of 16 and has awarded Rs.96,000/- along with Rs.5000/- conventional charges. In

my opinion, in addition to this amount the petitioners are also entitled to Rs.10,000/- which petitioners have spent on the last rites of the deceased, as stated by PW-2 Smt.Kamlesh. Thus, in all the petitioners are entitled to Rs.1,11,000/- along with interest at the rate of 9% per annum.

11. The result of above discussion is that FAO No.117 of 2003 is partly allowed. The award dated 3.10.2002 passed by the Motor Accident Claims Tribunal-1, Solan in M.A.C. Petition No.28-S/2 of 2001 is modified. The petitioners are entitled to Rs.1,11,000/- compensation, out of which petitioner No.1 will get Rs.66,000/- and petitioner No.2 Rs.55,000/-, on account of death of their son Devi Dayal along with interest at the rate of 9% per annum from the date of petition till payment. The compensation amount is to be paid jointly and severally by both the respondents. FAO No.125 of 2003 is dismissed with no order as to costs.

(Kuldip Singh)
Judge.

April 30, 2007
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